



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNSD MNDC FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, received at the Residential Tenancy Branch on September 30, 2016 (the "Application"). The Landlord applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession for unpaid rent or utilities;
- an order allowing the Landlord to keep all or part of the security deposit or pet damage deposit;
- an order for money owed or compensation for damage or loss; and
- an order granting recovery of the filing fee.

The Landlord was represented at the hearing by M.F., who provided affirmed testimony. The Tenant did not attend the hearing.

On behalf of the Landlord, M.F. testified that the Tenant was served with the Landlord's Application package, including the Notice of a Dispute Resolution Hearing and documentary evidence, by leaving a copy on the door of the Tenant's rental unit. I find the Tenant was duly served with the Landlord's Application package. However, section 89(1) of the Act does not permit applications for monetary relief to be served by posting a copy on the door of the Tenant's rental unit. Section 89(2) of the Act does permit applications for *orders of possession* to be served in this way. Accordingly, I will address only the Landlord's application for an order of possession for unpaid rent in this Decision. The Landlord's Application for monetary relief is dismissed with leave to reapply at a later date. The Landlord is reminded that the tenant must be served with an application for monetary relief in accordance with section 89(1) of the Act.

The Landlord was given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to an order of possession for unpaid rent or utilities?
2. Is the Landlord entitled to an order granting recovery of the filing fee?

Background and Evidence

The Landlord testified that the tenancy began in July 2012. Rent, which is based on income, is currently \$309.00 per month; rent is due on the first day of each month.

On behalf of the Landlords, M.F. testified that rent was not paid when due on September 1, 2016. Accordingly, the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated September 7, 2016 (the "10 Day Notice"). The 10 Day Notice, which included an amount for unpaid rent in August 2016, was served on the Tenant on September 7, 2016, by posting a copy on the door of his rental unit. According to M.F., rent in the amount of \$1,563.00 is currently outstanding, and represents unpaid rent for the months of August, September, October and November 2016. The Tenant and his children still live in the rental unit.

Analysis

Based on the unchallenged and affirmed oral testimony and the documentary evidence submitted by the parties, and on a balance of probabilities, I find:

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. When a tenant does not pay rent when due, section 46 of the *Act* permits a landlord to end the tenancy by issuing a notice to end tenancy. A tenant who receives a notice to end tenancy and wishes to dispute it has five days to either pay rent or file an application for dispute resolution. When a tenant does not pay rent or file an application for dispute resolution, the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice.

In this case, the Landlord testified, and I find, that rent was not paid when due on September 1, 2016. Accordingly, the Landlord served the 10 Day Notice on the Tenant

by posting a copy to the door of his rental unit on September 7, 2016. Pursuant to section 90 of the *Act*, documents served in this manner are deemed to have been received three days later. I find the Tenant is deemed to have received the 10 Day Notice on September 10, 2016.

As noted above, a tenant has five days after receiving a notice to end tenancy for unpaid rent to either pay rent or make an application for dispute resolution. In this case, I find the Tenant has done neither. Accordingly, pursuant to section 46(5) of the *Act*, the Tenant is conclusively presumed to have accepted the end of the tenancy. As a result, I find the Landlord is entitled to an order of possession, which will be effective two (2) days after service on the Tenant.

Having been partially successful, I find the Landlord is also entitled to recover the \$100.00 filing fee paid to make this Application. Accordingly, pursuant to section 67 of the *Act*, I grant the Landlord a monetary order in the amount of \$100.00.

Conclusion

I grant the Landlord an order of possession, which will be effective two (2) days after service on the Tenant. This Order may be filed in and enforced as an order of the Supreme Court of British Columbia.

I grant the Landlord a monetary order in the amount of \$100.00. This Order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 22, 2016

Residential Tenancy Branch